LIM CHEE CHENG & ORS

v.

PENTADBIR TANAH DAERAH SEBERANG PERAI TENGAH, BUKIT MERTAJAM

COURT OF APPEAL, KUALA LUMPUR
NH CHAN JCA
ABU MANSOR ALI JCA
AHMAD FAIRUZ JCA
[CIVIL APPEAL NO: P-01-144-95]
18 FEBRUARY 1999

LAND LAW: *Acquisition of land - Award - Appeal against compensation - Valuation report - Comparables used - Whether award fair*

This was the appellants' appeal against the award of compensation made by the respondent, namely the Collector of Land, Seberang Perai Tengah, Bukit Mertajam ('the Collector'), in respect of their land which had been gazetted and compulsorily acquired for industrial development ('the subject land'). The Collector had awarded the appellants RM96 per sq ft and the appellants appealed to the High Court. The High Court upheld the award and the appellants appealed to the Court of Appeal.

At the appeal, the appellants raised the preliminary issue that s. 214 of the National Land Code 1965 ('the NLC') did not apply to Penang unless it was adopted, which it was not.

Held:
Per Abu Mansor Ali JCA

[1] The NLC was enacted by Parliament at the request of all the states under art. 76(4) of the Federal Constitution for the sake of uniformity and therefore the question of adoption did not arise.

[2] The Collector and the learned judge paid due regard to the government's valuation report, which took into account the existence of a nearby industrial estate.

[3] The learned judge had also correctly preferred the comparables used by the government's valuer to those used by the appellants' valuer as the latter had used small lots located far from the subject land.

[4] As the learned judge had not erred in any way in concluding that the Collector's award was fair and reasonable, the appeal had to be dismissed.

[Appeal dismissed.]

Legislation referred to:
Federal Constitution, art. 76(4)
National Land Code 1965, s. 214

For the appellants - R Rajasingam; M/s R Rajasingam & Co
For the respondent - Alizatul Khair Osman Khairuddin (Che Mohd Ruzima Ghazali with her)

[Appeal from High Court, Pulau Pinang; Land Acquisition No: 15-11-1992]

Reported by Anne Khoo

JUDGMENT

Abu Mansor Ali JCA:

Before proceeding to hear the appeal proper we have to deal with the motion filed by Mr. Rajasingam, the appellant's counsel. The appellant contended that s. 214 of the National Land Code did not apply to Penang unless it was adopted. There was no such adoption. YB Dato' Alizatul, the State Legal Adviser Penang, on the other hand, contended correctly in our view, that as the National Land Code (Act No. 56 of 1961) was enacted by Parliament at the request of all States under art. 76(4) of the Federal Constitution for the sake of uniformity, the question of adoption did not arise. Finally, Mr. Rajasingam agreed, if indeed it came under cl. (4) of the above article, then there is therefore no need for any adoption. We agreed with the substance of YB Dato' Alizatul's submission and dismissed the applicant's motion with cost.

We then proceeded to hear the appeal proper. The appeal was on the quantum of the award. The appellant was dissatisfied with the amount the learned High Court judge awarded, RM96 per square foot, upholding the award of the collector of land Seberang Perai Tengah, Bukit Mertajam. The appellant contended that the award of the collector was on the low side and that the learned High Court judge erred in confirming it. He prayed that we disturb it.

The subject land was Lot 722 Mukim 13, Daerah Seberang Perai Tengah. The subject land was gazetted on 6 June 1991 and acquired for the purpose of industrial development. The area of the subject land was 145.9721 acres and the whole land was to be acquired.

The subject land was fronting the road, Jalan Permatang Tinggi – Bukit Minyak. It is to the south-east of the town of Butterworth and about 7 kilometers to the west of the town of Bukit Mertajam. It is adjacent to Kampung Baru Juru, a housing estate of Juru and Permatang Tinggi. The subject land was estate land over 100 acres in area planted with palm oil and

rubber. The land was about 3 feet above the level of the road. The land was served by laterite road and had good drainage system. Before it was gazetted it was zoned as agriculture land.

The area was served with electrical, water and telephone facilities although the subject land was yet to be so connected. Available was bus and taxi service, serving the main roads. The land was provided with infrastructure for collection of oil palm fruits. There was a temporary house for the estate manager which served also as a store for manure and equipment.

Mr. Rajasingam, on behalf of the appellant advanced several grounds. His first ground was that the learned judge erred in arriving at his award, and, at p. 25 of the Appeal Record, in his judgment the learned judge said:

> Tidak terdapat perindustrian disekitar tanah terlibat. – translated – there is no industry found on the subject land.

Whereas, according to p. 49 of the Appeal Record, so says Mr. Rajasingam, there is Bukit Tengah Industrial area to the north of the subject land and the learned judge failed to take this factor into account. Finally, Mr. Rajasingam conceded that at p. 57 of the Appeal Record the government valuer had mentioned, in coming to his valuation, the existence of Permatang Tinggi Industrial estate. We think the collector and the learned judge paid due regard to the government valuation report before coming to their decision.

The second ground of complaint raised by appellant's counsel was that the learned judge erred, at p. 24 of the Appeal Record, when he rejected comparables used by the appellant's valuer in map "Fl" in exh. 'B'. The reason given by the learned judge rejecting them as comparables was because of their distance from the subject land, they being far from the subject land but much more nearer to the town of Kepala Batas, which is situated far to the north of the subject land.

We are of the view that the learned judge had correctly rejected those comparables and preferred those comparables used by the government valuer. We found this ground of appeal lacked merit. We therefore endorsed what had been said by the learned judge in his judgment at p. 24 that comparables used by the appellant's valuer were unsuitable because they were estate land, like the subject land, but of small lots and therefore not suitable.

At p. 25 and p. 26 of his grounds of judgment, the learned judge had set out the reason why he came to the conclusion that the subject land was about RM32,000 per acre after having made suitable adjustment in regard to previous sales of other comparables and their relative distances to subject land. And at p. 27 of his grounds of judgment, the learned judge was more than generous, in arriving at a decision that the subject land, after his careful analysis, was valued at RM36,400 per acre.

Finally at p. 29 of his grounds of judgment, after pointing to the absence of direct comparison to the subject land as it was an estate and consequently could in no way easily be compared with sales of small lots, the learned judge ended by saying that the value of the subject land, in his earnest view, could not be more than RM40,000 per acre. He also concluded that the award of the collector was fair and reasonable and does not deserve to be increased. He confirmed the collector's award and dismissed their appeal. Likewise since the learned judge had not erred in any way, we have no quarrel with the award of the learned judge and we dismissed the appellant's appeal.